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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Question of the realization in all countries of economic, social and cultural rights

Report of the Secretary-General on the role of economic, social and cultural rights in building sustainable and resilient societies for the implementation of the 2030 Agenda for Sustainable Development

Summary

The present report is submitted pursuant to Human Rights Council resolution 34/4, in which the Council requested the Secretary-General to prepare an annual report on the question of the realization in all countries of economic, social and cultural rights, with a special focus on the role of economic, social and cultural rights in the transformation towards sustainable and resilient societies.

In the report the Secretary-General identifies linkages between economic, social and cultural rights and hazards, disasters, crises and conflicts. He further discusses the concept of resilience from a human rights perspective and outlines elements of a human rights-based approach to building sustainable and resilient societies.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 34/4, in which the Council requested the Secretary-General to prepare an annual report on the question of the realization in all countries of economic, social and cultural rights, with a special focus on the role of economic, social and cultural rights in the transformation towards sustainable and resilient societies.

2. The 2030 Agenda for Sustainable Development is unequivocally anchored in human rights and has at its heart the commitment to leave no one behind and to reach the furthest behind first. Member States have committed to reducing inequalities as a pathway towards sustainable development. It aims to address the multidimensional causes of poverty, inequality and discrimination, and reduce the vulnerabilities of the most marginalized people, including women, refugees, internally displaced persons, migrants, minorities, indigenous peoples, stateless persons and populations affected by conflict and natural disasters.

3. Disasters undermine economic and social progress towards sustainable development and full realization of human rights. The 2030 Agenda therefore aims to increase the resilience of societies and ecosystems to man-made and natural hazards, shocks and stresses; promote multisectoral, integrated approaches that harness the potential, assets and capacities of institutions and communities to enhance human well-being, and reduce the risks and vulnerabilities associated with natural hazards, climate change, violence, conflict, political and social instability or economic volatility, and manage the change and uncertainty of long-term trends. At the World Humanitarian Summit, global leaders announced significant commitments to enhancing compliance with international human rights and humanitarian law and to working together with all actors towards collective outcomes that reduce need, vulnerability and risk, in support of national and local efforts, in order to "reach the furthest behind first".

4. There are strong links between sustainability and resilience and human rights, including economic, social and cultural rights. Sudden onset events, such as earthquakes, destroy lives, homes and livelihoods, and can set back the progress of development for decades. Climate change is eroding enjoyment by many people of a broad range of human rights, such as the right to food, water and sanitation, health and adequate housing. Other disasters, either directly caused by or exacerbated by State actions and omissions, and conflicts also undermine the full realization of economic, social and cultural rights.

5. Those "left furthest behind" are often the ones that bear the disproportionate impact of such disasters. The fundamental human rights challenges of poverty, inequality and discrimination, as well as unchecked urbanization, migration, conflicts and governance and accountability deficits, all contribute to increased vulnerability and risks.

6. Increasing the resilience of societies, economies and the natural environment can help countries, communities and those living in poverty to withstand shocks, embrace uncertainty and manage risks. A human rights-based approach to building resilience is value-based, building on the comprehensive legal framework based on the indivisibility and interdependence of all human rights. It focuses on the rights holders and requires the effective accountability of duty bearers.

II. Linkages between economic, social and cultural rights and crises, disasters and conflicts

A. Threat of climate change to the realization of economic, social and cultural rights

7. Over the past decade, more than 700,000 people have lost their lives, over 1.4 million have been injured and approximately 23 million have been made homeless as a

result of disasters. Overall, more than 1.5 billion people have been affected by disasters. The total economic loss is more than $1.3 trillion.[1]

8. Each year, on average 42 million life years are lost in internationally reported disasters. That represents a serious setback to social and economic development, and to the progressive realization of economic, social and cultural rights. Economic losses from disasters, such as cyclones and flooding, are now estimated at between $250 billion and $300 billion. Future annual losses from disasters are estimated at $314 billion and expected to increase to $415 billion by 2030.[2] If the risks from disasters are not reduced and managed, and resilience strengthened, they will represent a significant opportunity cost, as these resources, equivalent of the gross domestic product of countries such as Denmark or Israel, could otherwise be invested for the realization of economic, social and cultural rights, in social protection and in health and education, and towards building resilient and sustainable societies.

9. Climate change threatens the full enjoyment of a wide range of human rights, including economic, social and cultural rights such as the rights to life, health, food, housing and water (see A/HRC/31/52 paras. 23–27). Climate change will exacerbate the challenges of improving access to safe drinking water — as of 2015, 2.1 billion people lacked safely managed drinking water services.[3] Climate change is also likely to reduce the availability of water in most dry subtropical regions and to increase the occurrence of droughts, severely affecting the livelihoods and the right to food of populations living in such areas. More broadly, climate change will jeopardize food security and therefore the sustainable and progressive realization of the right to food. Climate change without adaptation will have a negative impact on the production of major crops, such as wheat, rice and maize, in both tropical and temperate regions, and is already impairing the ability of some communities to feed themselves.[4]

10. Climate change is increasingly becoming one of the major causes of migration. Although migration is usually triggered by a variety of complex factors, climate change and associated impact on the livelihood has driven millions of people to move, not of their own free will, but out of the need to escape conditions in which they cannot meet their basic human rights. At a panel discussion on human rights, climate change, migrants and persons displaced across international borders, convened by the Human Rights Council on 6 October 2017, pursuant to Council resolution 35/20, participants called for preventive measures, such as improved early warning systems, disaster risk reduction and resilience-building efforts, sustainable development and international cooperation, including on transboundary water, in order to reduce negative impacts on human rights resulting from climate change.[5]

B. Emerging risks of violence and conflict

11. The intensifying competition over dwindling natural resources, water, land and other elements that are crucial for an adequate standard of living and the denial of economic and social rights are increasingly at the centre of violence and social unrest. Violations of economic, social and cultural rights are closely linked to and often at the root of the emergence of violence, social unrest and conflict (E/2016/58). Financial and economic crises, often accompanied by rigid austerity measures, have also undermined economic, social and cultural rights and resulted in protests and social unrest.

[1] United Nations Development Programme, *Strengthening Disaster Risk Governance* (2015).

[2] United Nations Office for Disaster Risk Reduction, *Global Assessment Report on Disaster Risk Reduction* (2015).

[3] World Health Organization and United Nations Children's Fund, *Progress on Drinking Water, Sanitation and Hygiene: 2017 Update and SDG Baselines*.

[4] Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability*, part A, ch. 7.

[5] See A/HRC/37/35 (forthcoming).

12. Scarcity of water is a case in point. Water is a fundamental human right, but 2.1 billion people still lack access to safe drinking water. Most of them live in fragile, often violent regions of the world where water is a matter of life and death.[6] Shortage of water has been an essential factor leading to conflict, violence and social unrest in many cases. For example, researchers have found that the Syrian conflict that began in 2011, although having its roots in issues including long-standing political, religious and social ideological disputes, was exacerbated by severe water shortages in the region resulting from multi-year droughts since the mid-2000s. That contributed to the displacement of large populations from rural to urban centres, resulted in food insecurity for more than 1 million people, increased unemployment, and contributed to political instability, violence and social unrest.[7]

13. In several countries and regions in Africa, there have been disputes and conflicts over the control of water sources and land for pasture and farming.[8] In Latin America, poor or inequitable management of water services has also caused social unrest (see E/2016/58, paras. 21–22). Conflicts have also arisen from the overexploitation of groundwater for agribusinesses or industrial purposes, depriving local communities and farmers of sufficient and reliable water access. In 2015, small farmers in the town of Ocucaje in the Ica Valley, Peru, clashed with workers laying the pipes that would pump water from three wells and channel it to a farm eight miles away that produces table grapes for export. As a result of pumping over the last two decades by companies in the Ica Valley, groundwater levels have fallen throughout much of the area. The town is already struggling with serious water shortages and villagers are concerned that the proposed pumping would further threaten water supplies.[9]

14. Unchecked urbanization poses another risk to the enjoyment of economic, social and cultural rights. Over the last decades, the world has experienced an unprecedented shift of its population from rural to urban areas. Today, more than half the world's population live in cities and peri-urban areas. In many parts of the world, rapid rural to urban migration is motivated by the prospect of greater employment opportunities and the hope of a better life in cities. However, when such migration happens in an unplanned and unprepared manner, and especially in the context of widespread poverty, it exacerbates many of the risks and challenges already faced by cities and leads to further deterioration in the enjoyment of human rights. The result is sprawling slums and informal settlements that are often built in precarious and unsafe areas prone to degradation and natural disasters and a lack or inadequate provision of basic services, including education, health and water and sanitation.

15. That fuels social instability, urban violence and social unrest. Unemployment among youth and dissatisfaction over future prospects are linked with social unrest and often associated with extremism (see E/2016/58, para. 14). Widening inequality, competition over scarce resources such as land, impunity and weak city governance increase the risk of violence and potential breakdowns in law and order.

16. Rapid urbanization inevitably results in increased demand for housing units and had led to unregulated real estate and land speculation, predatory mortgage lending and commodification of housing. The shortage of affordable housing not only contributes to social exclusion, it also threatens to destabilize the wider economy if housing price increases fuel property bubbles, coupled with mortgage crises and deregulated global flows of capital, as was seen in the 2007 mortgage crises in many countries, which had devastating effects on low-income households and households living in poverty (see A/71/310, para. 22).

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[6] See Global High-level Panel on Water and Peace, *A Matter of Survival* (2017), pp. 11–14.

[7] See Peter H. Gleick, "Water, drought, climate change, and conflict in Syria", *Weather, Climate, and Society*, vol. 6, No. 3 (July 2014).

[8] See the Pacific Institute database on water conflict for more examples from around the world, available from http://worldwater.org/water-conflict/.

[9] See Desert Sun, "The costs of Peru's farming boom: thriving agribusiness, declining aquifers and conflicts over water", available at www.desertsun.com/story/news/environment/2015/12/10/costs-peruas-farming-boom/76605530/.

III. Understanding resilience from a human rights perspective

A. International agreements related to resilience

17. The concept of resilience features prominently in the Sustainable Development Goals and recent policy frameworks on climate change and humanitarian actions. The present section explores how the human rights framework can contribute to that debate.

18. In 2007, the Intergovernmental Panel on Climate Change defined resilience as "the ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organization, and the capacity to adapt to stress and change".[10] That understanding of resilience is anchored in the context of climate change adaptation focused on social or ecological systems rather than on people themselves.

19. In 2009, the United Nations International Office for Disaster Reduction defined the term as: "The ability of a system, community or society exposed to hazards to resist, absorb, accommodate, adapt to, transform and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions through risk management".[11]

20. The intergovernmental discussions and agreements on sustainable development, environmental and climate change, disaster risk reduction and humanitarian assistance have been built on the two definitions of resilience referred to above. However, there is a need for a much wider and more coherent understanding of what resilience is and the measures needed to strengthen resilience towards building sustainable societies and the full realization of all human rights.

1. 2030 Agenda for Sustainable Development

21. Resilience is explicitly mentioned in two goals and eight targets of the Sustainable Development Goals related to poverty, food security, infrastructure and human settlements, agricultural production, climate-related hazards and natural disasters and marine and coastal ecosystems. That represents a marked shift from the 2000 Millennium Declaration and the Millennium Development Goals, which were void of any reference to resilience or related concepts.

22. Resilience features prominently in the preamble to resolution 70/1, in which Member States committed "to take the bold and transformative steps ... to shift the world on to a sustainable and resilient path", pledged that no one would be left behind, and set a vision for a "world where human habitats are safe, resilient and sustainable". Goal 1 on ending poverty includes a target to build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters (target 1.5). Goal 2 on ending hunger includes a target to ensure sustainable food production systems and implement resilient agricultural production (target 2.4). Goal 9 on infrastructure and sustainable industrialization includes targets to develop and facilitate sustainable and resilient infrastructure (targets 9.1 and 9.a). Goal 11 on cities and human settlements includes targets to increase the number of cities and human settlements adopting and implementing integrated policies and plans towards resilience to disasters (target 11.b) and support least developed countries in building sustainable and resilient buildings (target 11.c).

[10] See Intergovernmental Panel on Climate Change, fourth assessment report, *Climate Change 2007: Synthesis Report*, annex II.

[11] See United Nations Office for Disaster Risk Reduction, "2009 UNISDR terminology on disaster risk reduction".

2. Paris Agreement on Climate Change

23. The concept of resilience has gained increased prominence in the intergovernmental discussions on climate change since 2010. The Paris Agreement on Climate Change, adopted in 2015 at the twenty-first annual Conference of the Parties to the United Nations Framework Convention on Climate Change, refers to resilience in several areas related to building adaptive capacity and reducing vulnerabilities to the adverse effects of climate change. For example, article 7 stipulates that "Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change".

3. Sendai Framework for Disaster Risk Reduction 2015–2030

24. Building on the achievements and lessons from the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters, at the World Conference on Disaster Risk Reduction, held in Sendai, Japan, in March 2015, Member States adopted the Sendai Framework for Disaster Risk Reduction 2015–2030. As in its predecessor, the concept of resilience remains a central theme in the Sendai Framework. In the preamble, Member States committed to addressing disaster reduction and the building of resilience to disasters with a renewed sense of urgency within the context of sustainable development and poverty eradication, to integrating both disaster risk reduction and the building of resilience into policies, plans, programmes and budgets at all levels and to considering both within relevant frameworks. Among its global targets and priorities for action, the Sendai Framework includes a commitment to substantially reducing disaster damage to critical infrastructure and disruption of basic services, among them health and educational facilities, including developing their resilience by 2030.

4. World Humanitarian Summit

25. The World Humanitarian Summit was held in Istanbul on 23–24 May 2016 at the initiative of the Secretary-General, in order to reinvigorate a commitment to humanity and to initiate a set of concrete actions and commitments aimed at enabling countries and communities to better prepare for and respond to crises and be resilient to shocks. As stated in the Chair's summary, the Summit was a unique opportunity for the global community to take responsibility to place people first: to secure their safety, to uphold their dignity and to provide opportunity for a better future. The concept of resilience permeated the Agenda for Humanity presented by the Secretary-General to the Summit (A/70/709, annex) and throughout the extensive consultations in the lead-up to the Summit. It was included in three of the five core responsibilities developed in the agenda: core responsibility 3 on leaving no one behind focuses on reducing the vulnerability and increasing the self-reliance of refugees and internally displaced persons; core responsibility 4 on changing people's lives from delivering aid to ending need emphasizes the importance of building community-level resilience to respond to natural disasters and the impacts of climate change; and core responsibility 5 on investing in humanity underscores the need to strengthen preparedness and economic resilience and invest in basic infrastructure such as education and health systems.

B. International human rights framework

26. Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. As universal and inalienable rights, human rights are applicable everywhere and under any circumstances, including in times of crisis and disaster. All States have positive human rights obligations to respect, protect and fulfil human rights.

27. International human rights treaties do not include specific reference to resilience as such. Limited references to natural disasters can be found in article 11 of the Convention on the Rights of Persons with Disabilities, which stipulates that States parties should take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the

occurrence of natural disasters. Article 23 of the African Charter on the Rights and Welfare of the Child stipulates that States should take all appropriate measures to ensure that internally displaced children, including those displaced through natural disaster, receive appropriate protection and humanitarian assistance and article 25.2 states that they should take all necessary measures to trace and reunite children with their parents or relatives, including where separation took place due to natural disasters. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa also recognizes the obligations of States parties to prevent internal displacement, and protect and provide assistance to internally displaced persons (art. 2). It also requires States parties to promote self-reliance and sustainable livelihoods amongst internally displaced persons (art. 3 (1) (k)).

28. Notwithstanding the lack of specific references in human rights law, disaster risk reduction and mitigation of the negative impacts of climate change and other crises have received increased attention by human rights mechanisms in recent years. A significant body of work exists under the treaty bodies, including the Committee on Economic, Social and Cultural Rights, and under the special procedures mandates relating to the environment, internally displaced persons, the right to adequate housing, the right to water and sanitation and the human rights of indigenous peoples. Under the universal periodic review mechanism, several recent recommendations have been put forward calling on States to adopt a human rights-based approach in disaster prevention and emergency responses to build national capacity and resilience to natural disasters (see A/HRC/34/14, para. 115.166); develop a national resilience strategy for natural disasters in order to guarantee the economic and social rights of the population (see A/HRC/32/6, para. 128.157); and continue efforts on democracy, good governance, legislative reform and capacity-building for national human rights mechanisms, with more focus on employment for youth, education, health care, social welfare and preparedness and resilience in response to climate change (see A/HRC/26/9, para. 99.109).

C. State obligations under human rights law

29. The realization of human rights, including economic, social and cultural rights, implies specific obligations and responsibilities for all actors involved. Under international human rights law, the primary responsibility rests with States as duty bearers. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil entails States undertaking positive action to facilitate the enjoyment of basic human rights.

30. The International Covenant on Economic, Social and Cultural Rights provides that States are obligated to work progressively to fully realize those rights for everyone. The principle of progressive realization does not mean that the implementation of Covenant rights can be indefinitely postponed; rather, States must take steps and to the maximum of available resources and by all appropriate means work progressively towards the full realization of those rights for everyone. States also have obligations of an immediate nature, including the obligation to eliminate discrimination, to meet minimum essential levels of each of the rights and to ensure non-retrogression.

31. Those principles imply that, even in the event of disaster or crisis, States are obligated to ensure that the population affected has access to the basic services and resources necessary, without discrimination. Moreover, they must ensure that people's enjoyment of economic, social and cultural rights do not deteriorate, by taking preventative steps in anticipation of disasters and the foreseeable adverse effects of climate change. Human rights obligations therefore apply not only to direct protection measures, but also to the mitigation and adaptation measures that are aimed at protecting people's enjoyment of these rights.

32. States have several obligations to protect against environmental harm that impairs the enjoyment of human rights (A/HRC/25/53). Such obligations include procedural and substantive ones as well as those in relation to vulnerable groups. Procedural obligations

require States to (a) assess environmental impacts and make environmental information public; (b) facilitate the meaningful participation of rights holders in environmental decision-making; and (c) provide access to remedies where those rights are violated. Substantive obligations, which may vary from one right to another, generally require States to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors. Additionally, in accordance with the human rights principle of equality and non-discrimination, States may have additional obligations to populations that are particularly vulnerable to environmental harm.

33. Under international human rights treaties, States are clearly obligated to mitigate the risks of hazards and disasters, including those arising from the impacts of climate change. Those obligations also extend to protection against negative impacts on human rights from activities of non-State actors. Principle 1 of the Guiding Principles on Business and Human Rights stipulates that States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. That requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication (see A/HRC/17/31, annex).

34. In its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, the Committee on Economic, Social and Cultural Rights indicated that:

> "States parties should also consider the use of administrative sanctions to discourage conduct by business entities that leads, or may lead, to violations of the rights under the Covenant. For instance, in their public procurement regimes, States could deny the awarding of public contracts to companies that have not provided information on the social or environmental impacts of their activities or that have not put in place measures to ensure that they act with due diligence to avoid or mitigate any negative impacts on the rights under the Covenant."

35. In recent years, the jurisprudence of regional human rights mechanisms has also helped to clarify the obligations of States with regard to prevention and mitigation, as well as remedies. An illustrative example can be found from the European Court of Human Rights in the case of *Budayeva and others v. Russia*, in which it considered whether and when deaths caused by a man-made or natural disaster can amount to a human rights violation by the State.

36. In July 2000, a mudslide triggered by the Gerhozhansu river swept through Tyrnauz, a town in the Republic of Kabardino-Balkaria in the north Caucasus, Russian Federation, killing eight people and destroying many buildings. The mud retention dams protecting Tyrnauz had been damaged by heavy mudslides in the previous year, but had never been repaired, as the State meteorological institute had advised. Shortly before the incident took place, the institute had warned the local Ministry for Disaster Relief about the imminent danger, given the recent heavy rainfall, and had requested the local authorities to take the necessary measures and to prepare to issue an emergency warning if necessary. The authorities failed to act on those recommendations. The day before the disaster, when a smaller mudflow hit the town and flooded some residential areas, the local authorities ordered the evacuation of the affected parts of the town. However, they did not prevent evacuees from returning to their homes on the following day when the mud level had subsided.

37. Claims for compensation made by the relatives of the victims were rejected by domestic courts on the ground that the victims died of natural causes that could not have been foreseen or prevented by the State. The appeal was then brought to the European Court of Human Rights, which found that the State was in violation of its duty to protect life, since it had not acted on the requests for the clear, preventive measures necessary to protect its population.

38. The ruling by the European Court recognized the State obligation to protect life against the consequences of disasters by reaffirming that the right to life "does not solely concern deaths resulting from the use of force by agents of the State but also … lays down a positive obligation on States to take appropriate steps to safeguard the lives of those

within their jurisdiction". The Court further stressed that "this positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life".[12] While States have considerable flexibility in implementing this obligation in terms of policy and operational options, the Court clarified the liability of a State for deaths if they have occurred because the authorities neglected their duty to take preventive measures when a natural hazard had been clearly identifiable and effective means to mitigate the risk were available to them.

IV. Human rights-based approach to building sustainable and resilient societies

39. Many disasters are also the result of unsustainable development planning and activities. Natural hazards, such as floods, earthquakes and storms, become disasters owing to human and societal factors which can be addressed by decisive policies, actions and active participation.[13] The human rights framework offers guidance for strengthening the resilience and protection of people at risk from disasters and crises.

A. Putting people at the centre

40. Human rights belong to people: the human person is the central subject of the development process as both the main participant and beneficiary of development, as proclaimed in the Declaration on the Right to Development. From a human rights perspective, working towards resilient and sustainable societies requires a focus on people, moving beyond the traditional focus on social and ecological systems to the need for individuals to be resilient. A human rights-based approach views affected persons as rights holders and not just objects or beneficiaries of development and humanitarian activities. That contributes to better awareness and clarity in terms of relevant standards and entitlements under national and international laws, such as, for example, the right to adequate housing, water and sanitation and health for those living in informal settlements. Such awareness will enable them to assess their own situation, identify their claims and better negotiate with the authorities, which will strengthen the overall resilience capacity of people and communities to prepare, adapt and cope with crises.

41. Moreover, human rights law provides certain procedural rights that empower people to improve resilience. The right to freedom of expression provided under the Universal Declaration of Human Rights (art. 19) and the International Covenant on Civil and Political Rights (art. 19) includes the freedom "to seek, receive and impart information". The right to information is essential for disaster preparedness and protection from environmental harm, as well as for the exercise of other rights. Human rights bodies have repeatedly emphasized the importance of this right in the context of environmental impacts on human rights. For example, the Committee on Economic, Social and Cultural Rights in its general comment No. 15 (2002) on the right to water, stated that individuals should be given full and equal access to information concerning water and the environment (para. 48).

42. The right to public participation in decision-making is a core human rights principle and recognized under the Universal Declaration of Human Rights (art. 21) and the International Covenant on Civil and Political Rights (art. 25). Article 6 (a) of the United Nations Framework Convention on Climate Change requires its parties to promote and facilitate public participation and in its resolution 67/210, the General Assembly recognized "the need to engage a broad range of stakeholders at the global, regional, national and local levels, including national, subnational and local governments, private businesses and civil society, and including youth and persons with disabilities, and that gender equality and the effective participation of women and indigenous peoples are important for effective action

[12] *Budayeva and others v. Russia*, judgment of 20 March 2008, paras. 128–129.

[13] See Chengdu Declaration for Action from the Second World Cities Scientific Development Forum and the First Mayors' Summit on Disaster Risk Reduction, 11–13 August 2011.

on all aspects of climate change". In the context of disaster risk reduction, the Sendai Framework encourages States to assign, as appropriate, clear roles and tasks to community representatives within disaster risk management institutions and processes and decision-making through relevant legal frameworks, and undertake comprehensive public and community consultations during the development of such laws and regulations to support their implementation (para. 27 (f)).

43. Active, free and meaningful participation of rights holders, especially those who are marginalized and discriminated against, can foster critical consciousness and active civic engagement for more informed decision-making. Experience shows that people, when empowered to take part in decisions that affect them, are more likely to take their lives into their own hands and are thus more resilient to shocks.

B. Addressing the root causes of vulnerabilities

44. Human rights can help to gain a deeper understanding of the root causes of vulnerabilities and the requirements of resilience-building. The promise of the 2030 Agenda to leave no one behind not only entails reaching the poorest and the most vulnerable, but also seeks to address discrimination and growing inequality within and between countries and their root causes. Human rights standards, including the principles of participation, accountability, equality and non-discrimination, can help to guide such efforts.

45. Climate hazards and inequalities are intimately linked.[14] Climate hazards aggravate the pre-existing inequalities that are at the root of poverty, marginalization and exclusion. Because of structural inequalities, groups and communities that are marginalized and discriminated against are more likely to be exposed to climate hazards and less likely to have adequate resources and capacity for coping and recovery.

46. Exposure to climate and environmental hazards is often determined by where people live and work, which in turn is often determined by the socioeconomic status of those people and groups. Low-income groups and those discriminated against on the basis of race, ethnicity and other grounds, tend to live in marginal areas with poor infrastructure, often in precarious environments with higher levels of exposure to climate hazards and other extremities. Even when the level of exposure is the same, those groups are more susceptible to damage because they lack the assets and resources to cope, adapt and recover, as well as suffering from poor health, and a lack of education and knowledge.

47. Ensuring the human rights principle of equality and non-discrimination is therefore critical to reducing vulnerability and building resilience, and is a cornerstone of a human rights-based approach. The principles of equality and non-discrimination are enshrined in all core human rights treaties adopted since the Universal Declaration of Human Rights in which article 2 states that everyone is entitled to all rights and freedoms set forth in the Declaration, without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[15]

48. The United Nations System Chief Executives Board for Coordination recently adopted a system-wide framework to put the imperatives of addressing inequality and discrimination at the heart of the support of the system for the implementation of the 2030 Agenda for Sustainable Development.[16] In the framework, the need to ensure progress for

[14] See, for example, *World Economic and Social Survey 2016: Climate Change Resilience: an Opportunity for Reducing Inequalities* (United Nations publication, Sales No. E.16.II.C.1), ch. II.

[15] See also, for example, arts. 2 (2) and 3 of the International Covenant on Economic, Social and Cultural Rights; arts. 2 (1) and 3 of the International Covenant on Civil and Political Rights; arts. 1, 2 and 3 of the Convention on the Elimination of All Forms of Discrimination against Women; arts. 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination; art. 2 (1) and (2) of the Convention on the Rights of the Child; and art. 1 of the Convention on the Rights of Persons with Disabilities.

[16] See United Nations System Chief Executives Board for Coordination, "Leaving no one behind: equality and non-discrimination at the heart of sustainable development" (2017).

all population groups through supporting legal, policy, institutional and other measures aimed at promoting equality and non-discrimination in accordance with international human rights is emphasized. That will require, inter alia, (a) disaggregating data to identify who is being excluded or discriminated against, how and why, and who is experiencing multiple and intersecting forms of discrimination and inequality; (b) identifying patterns of discrimination in law, policies and practices, and addressing entrenched structural barriers and unequal power relations that generate and perpetuate inequality over generations; and (c) supporting the free, active and meaningful participation of all stakeholders, particularly the most marginalized, in the implementation of those policy and other measures so as to ensure accountability, recourse and remedies to all.

C. Accountability and remedies

49. The international human rights framework provides guidance for appropriate action by States in building resilience and working towards sustainable societies. In the area of disaster risk reduction, existing human rights obligations and standards and jurisprudence, such as the Budayeva case, point to a set of actions that the relevant authorities must take, including (a) enacting and implementing laws dealing with all relevant aspects of disaster risk mitigation and setting up the necessary mechanisms and procedures; (b) taking the necessary administrative measures, including supervising potentially dangerous situations; (c) informing the population about possible dangers and risks; (d) evacuating potentially affected populations; (e) conducting criminal investigations and prosecuting those responsible for neglecting their duties in the case of deaths caused by a disaster; (f) compensating the surviving relatives of victims killed as a consequence of those duties being neglected.[17]

50. A particularly useful feature of a human rights-based approach is the emphasis on effective remedies for violations of human rights. The Committee on Economic, Social and Cultural Rights, in its general comment No. 7 (1997) on forced evictions, stated that "legal remedies or procedures should be provided to those who are affected by eviction orders" and that "all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected". The Committee further noted in its general comment No. 15 (2002) on the right to water, that "any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels" and "all victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition". Recognizing the important role of national human rights institutions in strengthening accountability and providing remedies, the Committee also noted that they should be permitted to address violations of the right to water. Special procedures mandate holders, including those on the right to adequate housing, on the right to education, on the rights of internally displaced persons and on hazardous substances and wastes, and other United Nations mechanisms have also emphasized the importance of access to remedies within the scope of their mandates and issued guidelines which provide further guidance.[18]

[17] See Walter Kälin and Claudine Haenni Dale, "Disaster risk mitigation — why human rights matter", *Forced Migration Review*, issue No. 31 (October 2008).

[18] See for example: the basic principles and guidelines on development-based evictions and displacement issued by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (A/HRC/4/18, annex) and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex).

D. Integrating economic, social and cultural rights in early warning and risk analysis

51. There is increasing evidence that violations of economic, social and cultural rights are causes, consequences and often even predictors of an escalation in human rights violations, violence and conflict. Despite the obvious connection between economic, social and cultural rights and social unrest, existing early warning mechanisms tend to overlook those linkages.

52. In his report to the Economic and Social Council on early warning and economic, social and cultural rights (E/2016/58), the United Nations High Commissioner for Human Rights illustrated the links between economic, social and cultural rights and violence, social unrest and conflict through concrete cases from across the globe. He further highlighted the crucial elements of a human rights analysis that should inform early warning and conflict prevention efforts in the United Nations system and beyond.

53. While no single universal model can predict with certainty where and when unrest and conflict will erupt in the absence of preventive measures, some core elements regarding economic, social and cultural rights could effectively inform early warning analysis and preventative efforts. Some risk factors are considered cross-cutting and apply to any situation. They include severe inequality, lack of access to effective grievance mechanisms, lack of meaningful consultation, lack of democratic space for an active civil society and lack of media independence. Other risk factors are thematic and specific to certain contexts. They include unequal access to natural resources, in particular land, degradation in social services and unemployment.

54. For each of those risk factors, corresponding human rights indicators (structural, process and outcome) could be developed to inform an early warning analysis. For example, in relation to the cross-cutting risk factor for civil society space, the criminalization of the activity of human rights defenders could well prepare the ground for violence against them, possibly leading to social unrest. A useful indicator for such a risk factor would be the number of verified cases of the killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months.[19]

55. Another example is the thematic risk factor for unequal access, control and ownership over land and natural resources, and the failure to distribute fairly the benefits deriving from investment or development projects, which have in many situations led to violence, social unrest and conflict. Certain structural indicators could help assess the existence of relevant legislation guaranteeing the rights to social security, health and education. Process indicators could reveal the proportion of the budget allocated to health, education and social security, while outcome indicators could provide information on the coverage of social security and the number of persons entitled to benefits compared to those in need, and whether particular groups are affected. Outcome indicators could also comprise unemployment rates, including long-term unemployment (one year or more), in the target population group and education level.

V. Conclusions and recommendations

56. **Disasters, crises and conflicts, including those induced by climate change, pose a significant threat to progress towards sustainable development and the realization of all human rights, including economic, social and cultural rights. The present report has shown that natural hazards are not disasters in and of themselves. They become disasters depending on the multiple and complex interplay between the exposure, vulnerability and resilience of individuals and communities. Economic, social and cultural rights and other relevant human rights, such as the right to life, the right to**

[19] More information on human rights indicators can be found at www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx.

public participation and the right to information, contribute to efforts towards building resilient and sustainable societies because of the close interlinkages that exist between those rights and the impact and root causes of such events. The international human rights framework offers normative standards and guidance for States and others to take preventive action to reduce exposure and vulnerability and to enhance resilience, as well as to provide effective mitigation.

97. A number of actions that need to be taken from a human rights perspective in building the resilience of people and communities towards sustainable development, have been identified in the present report, inter alia:

(a) To respect, protect and fulfil economic, social and cultural rights and other relevant human rights at all times, which serves to strengthen the resilience of people and communities in times of disasters and crises;

(b) To gain a broader understanding of resilience, not limited to natural or scientific interpretations, but encompassing the full range of human rights, in order to develop measures to address the complex interplay of cultural, economic, environmental, political and social factors that are at the root of disasters and crises;

(c) To empower people affected by disasters and crises, so that they can effectively participate and exercise their rights in planning and recovery processes;

(d) To address inequality and discrimination, which is critical in reaching those who are left furthest behind first, who are typically most at risk and disproportionally affected by disasters and crises. To disaggregate data to identify who is being excluded or discriminated against, determine the root causes of inequality and discrimination, address unequal power relations and enhance the effective participation of people in decision-making processes that affect their lives, as essential elements of a human rights-based approach;

(e) To fully integrate human rights in developing effective measures for prevention, adaptation, mitigation and recovery, and be guided by the human rights framework, which clarifies the obligations of States and the responsibilities of other actors and helps to determine the content of their actions and the scope for international cooperation and assistance;

(f) To ensure the provision of remedy in cases where rights are violated, in accordance with international human rights law and strengthen the critical role national human rights institutions and regional and international human rights mechanisms play in monitoring violations of human rights.

(g) To fully integrate human rights and particularly economic, social and cultural rights into early warning and prevention efforts. Despite the inextricable linkages between economic, social and cultural rights and sustainable development, disasters, crises and conflicts, more efforts towards full integration of those rights into existing frameworks on disaster risk reduction and conflict prevention are needed;

(h) To honour and strengthen the climate change mitigation and adaptation commitments made by States under the Paris Agreement on Climate Change and effectively implement the Sendai Framework for Disaster Risk Reduction.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Summary of the biennial Human Rights Council panel discussion on unilateral coercive measures and human rights

Report of the Office of the United Nations High Commissioner for Human Rights

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I. Introduction

1. In its resolution 34/13, the Human Rights Council requested the United Nations High Commissioner for Human Rights to organize for the thirty-sixth session of the Council the biennial panel discussion on the issue of unilateral coercive measures and human rights, and requested the Office of the High Commissioner (OHCHR) to prepare a report on the panel discussion for submission and presentation to the Council at its thirty-seventh session. The Office submits the present report to the Council pursuant to that request.

2. The objective of the biennial panel discussion, held on 14 September 2017, pursuant to Council resolution 34/13, was to increase awareness among all stakeholders, including United Nations human rights mechanisms, of the negative impact that unilateral coercive measures have on the enjoyment of human rights in targeted and non-targeted countries. The discussion also offered a platform for the continuous exchange of views and experiences among Member States, academic and civil society organizations, human rights mechanisms and other stakeholders on the impact of unilateral coercive measures on human rights.

3. The panel discussion focused on the resources and compensation necessary to promote accountability and reparations. Its objective was to build consensus on the development of basic principles and guidelines and the identification of mechanisms to assess and mitigate the adverse impact of unilateral coercive measures and to ensure accountability; and to follow up on and update the recommendations of the previous panel discussions and workshops mandated by the Human Rights Council, held in 2015, 2014 and 2013, and the report of the Human Rights Council Advisory Committee (A/HRC/28/74).

4. The panel discussion was chaired by the Vice-President of the Human Rights Council, Amr Ramadan, and moderated by the Ambassador and Permanent Representative of the Bolivarian Republic of Venezuela to the United Nations Office at Geneva, Jorge Valero. The panellists were the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy; the Vice-Rector and Head of the International Law Department at the International University MITSO (Minsk), Alena Douhan; a member of the Advisory Committee, Jean Ziegler ; and the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas.

II. Opening of the panel discussion

5. The chair opened the session and gave the floor to the Director of the Thematic Engagement, Special Procedures and Right to Development Division, Peggy Hicks, who delivered an opening statement on behalf of OHCHR. The moderator then introduced the topic and defined the scope of the discussion. The panellists made their initial statements, which were followed by an interactive discussion with the participation of States and non-governmental organizations. Panellists reacted to comments from the floor in two rounds. The discussion concluded with the final remarks by the moderator.

6. Ms. Hicks recalled the Vienna Declaration and Programme of Action, which urged States to refrain from any unilateral measure not in accordance with international law; the Charter of the United Nations; and the call made by the Committee on Economic Social and Cultural Rights to inject a human rights dimension into deliberations on this issue.

7. Ms. Hicks also referred to a thematic study by OHCHR (A/HRC/19/33), which recommended that all Member States avoid the application of any coercive measures that had negative effects on human rights, particularly on the most vulnerable. In particular, she stressed that the positive impact that sanctions imposed with the objective of protecting human rights could be reasonably expected to have must outweigh the negative impact, and that the measures must be subject to appropriate human rights safeguards. Unilateral coercive measures nonetheless continued to be imposed without full consideration of their human rights impact, and without proper assessment, monitoring and remedy. Sanctions often failed to provide for clear exemptions for the purchase and payment of food or

medical supplies, which led to violations of the rights to food, to water, to health – and ultimately, to the right to life.

8. Ms. Hicks then encouraged the members of the panel to address the following questions:

- How could sanctions be designed so that they did not render already vulnerable parts of the population more vulnerable?
- What safeguards could be put in place when such measures were imposed?
- What review and monitoring were possible to assess the impact of measures on human rights, and how could immediate remedial measures be taken when sanctions had negative consequences?
- How could accountability and reparation be framed in this context?

III. Summary of the proceedings

9. During his initial remarks as moderator, the Ambassador and Permanent Representative of the Bolivarian Republic of Venezuela to the United Nations Office at Geneva, Jorge Valero, recalled the summit of the Movement of Non-Aligned Countries, held on Margarita Island, Bolivarian Republic of Venezuela, in September 2016, where Heads of State and Government condemned the approval and imposition of unilateral coercive measures in violation of the Charter of the United Nations and international law, particularly the principles of non-intervention, self-determination and the independence of States subjected to such practices. Mr. Valero echoed the call for the removal of such measures undermining human rights and which prevent people from achieving full economic and social development.

A. Contributions of panellists

10. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, affirmed that the basic principle when addressing unilateral coercive measures was to focus on prevention. Where such measures were adopted and entailed a negative impact on human rights, the right to a remedy should be effectively available and be protected at the national, regional and international levels. The lack of such mechanisms would contravene some of the basic obligations enshrined in most human rights treaties.

11. The Special Rapporteur described a range of differential legal mechanisms that offered potential avenues for victims of unilateral coercive measures to claim remedies and redress. In practice, however, such measures rarely granted the requisite degree of remedies or redress to affected parties. Some mechanisms were only available to States, such as the International Court of Justice, which had already considered the legality of economic sanctions under international law. In the case of *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the Court's ruling suggested that the freedom to impose measures restricting trade with a targeted State was limited to situations where such measures would not involve a violation of existing treaty obligations. The Special Rapporteur suggested that the Court could be requested to provide an advisory opinion on the legality or otherwise of unilateral coercive measures that could be in conflict with the International Bill of Human Rights. Another inter-State mechanism was the act of resorting to the Dispute Settlement Body of the World Trade Organization in the case of sanctions between States Members of the Organization. In such cases, the State imposing sanctions was likely to invoke the security exceptions (art. XXI) of the General Agreement on Tariffs and Trade. The admissibility of the defence would have to be assessed on a case-by-case basis.

12. With regard to mechanisms directly available to affected individuals and entities, the Special Rapporteur gave the examples of national, regional and international mechanisms. National courts had rarely addressed cases concerning unilateral coercive measures in a

satisfactory manner. For regional mechanisms, the Special Rapporteur referred to the example of European courts. Sanctions by the European Union were subject to full judicial review before the European Court of Justice. He emphasized how the courts had developed, over time, a rich jurisprudence of cases brought by individuals or entities subject to restrictive measures. In some cases, applicants had obtained delisting from sanctions. The European Court of Human Rights was also competent to adjudicate cases brought by individuals or legal entities for violations of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. The Court had already considered cases on sanctions, albeit in a more limited manner. Its jurisdiction was limited to the territory of Member States or over which the latter exercised control.

13. For international mechanisms, the Special Rapporteur discussed the treaty-based human rights bodies of the United Nations. Some of these mechanisms were, prima facie, relevant to the situation of persons whose human rights had been infringed by sanctions. Such mechanisms were, however, not available when the States imposing the sanctions were not party to the relevant instrument. He argued for targeting State accountability and liability for damages. States had not only obligations when they adopted measures applicable to their own territory, but also extraterritorial obligations insofar as the actions of the State could have an influence on situations abroad. A State imposing sanctions should therefore be liable for any resulting human rights violations.

14. Although a treaty body could render a decision with regard to remedial action to be taken by a State, such as compensation to victims, their decisions were not legally binding on targeting States. Complaints of violations of human rights caused by the application of unilateral coercive measures may also be submitted to the special procedures of the Human Rights Council, or to its complaint procedure mechanism.

15. The Special Rapporteur concluded by suggesting that a compensation commission could be set up under the Security Council or, alternatively, be established by means of a multilateral convention. States that had imposed unilateral coercive measures on other States could be called upon to contribute financially to such a commission.

16. The Vice-Rector and Head of the International Law Department at the International University MITSO, Alena Douhan, argued that the impact of unilateral coercive measures was similar to that of other threats to international peace and security, leading to negative effects and even the destabilization of progress in the peaceful social and economic development of peoples around the world. The debate on remedies, however, first required a clear definition of what unlawful unilateral coercive measures actually were, taking into account not only the mechanisms used but also their consequences and purposes, as well as immediate and long-term responses.

17. Ms. Douhan proposed the reactivation of the fact-finding mechanisms of the Security Council and the General Assembly as a response to unilateral coercive measures. She also suggested making active use of the special procedures and other mechanisms of the Human Rights Council, such as the treaty bodies and the complaint procedure.

18. With regard to immediate responses to unilateral coercive measures applied to natural and legal persons, an individual or a legal entity should have the right to appeal to a national court, which could assess the legality of the measures and decide, if applicable, on the most appropriate criminal or administrative penalty. If the targeted individual or legal entity is acquitted of the charges that triggered unilateral coercive measures, the State of habitual residence of that individual or legal entity would be empowered to request the cessation of the measures, which would have to be lifted immediately. In all cases, the natural or legal entity targeted by the measures would have the right to stand trial, with the observance of other due process guarantees.

19. Long-term responses to unilateral coercive measures should inevitably include the drafting of a clear definition of such measures, and of criteria upon which activities could be judged as illegal. The lack of a definition opened the way for misuse by both sanctioning and sanctioned States. Therefore, if the means of pressure applied by a State were legal under international law, they would not constitute unilateral coercive measures and could not constitute grounds for accountability or reparations.

20. According to Ms. Douhan, steps should be taken at the highest level, such as by means of a General Assembly resolution, to prevent the adoption and application of unilateral coercive measures. When a State sought to change the behaviour of another State leading to a dispute between them, it should seek a settlement through any peaceful means available, for example, the Dispute Settlement Body of the World Trade Organization, which addresses the application of economic sanctions.

21. The whole system involving the application of targeted sanctions should be amended to ensure that it offers guarantees of due process. Criminal or administrative proceedings should be started immediately by the targeting State with simultaneous submission of information about the party concerned to the Security Council (or the European Council in the case of restrictive measures applied by the European Union). Targeted sanctions should be lifted if the party concerned was acquitted.

22. Ms. Douhan concluded by pointing out that natural or legal entities should be able to have recourse to relevant bodies that are able to decide whether a given act falls within the scope of unilateral coercive measures, and order, if applicable, a response or compensation from the State responsible.

23. Jean Ziegler, a member of the Advisory Committee, pointed out that unilateral coercive measures generally violated economic, social and cultural rights, as well as the right to autonomous development, an opinion expressed by the Advisory Committee in a study issued some years earlier. He underlined how unilateral coercive measures constantly violated the human rights of people living in States subjected to sanctions. The Advisory Committee had concerned itself mainly with the way unilateral coercive measures functioned and the way they were technically implemented. The sanctions operated on three levels, on an ongoing basis, regardless of the State on which they were imposed. Firstly, there was an assault on the foreign relations of the State targeted. Secondly, the State deploying the sanctions interfered in the national economic, social and political policies in the State on which the sanctions had been applied. Thirdly, a press campaign also accompanied and tried to justify the sanctions.

24. Mr. Ziegler referred to the case of unilateral coercive measures applied by the United States of America on the Bolivarian Republic of Venezuela. The measures adopted by the President of the United States of America, Donald Trump, on 24 August 2017 affected the State's access to financial markets. The measures had been accompanied by interference in national politics and the economy, and by a press campaign to legitimize the unilateral coercive measures. Mr. Ziegler also drew a parallel between the circumstances surrounding the overthrowing of the democratically elected Government of Chile in 1973 at the three levels with contemporary unilateral coercive measures.

25. Mr. Ziegler welcomed the work of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and his proposal to establish a commission to regulate and put an end to unilateral coercive measures once and for all.

26. In his statement, the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, affirmed that the imposition of unilateral coercive measures threatened the realization of a democratic and equitable international order. These measures had been shown to cause immense harm to the world's most vulnerable populations, while granting disproportionate leverage to the powerful. In an interconnected and unsteady world, the unilateral actions of a single State could have a negative impact on the realization of rights across the globe. The ability of States to fulfil their economic, social and cultural rights obligations was hampered when unilateral actions disturbed the provision of public services or the maintenance of vital infrastructure. Human rights and humanitarian actors had raised concern about the particular harm that unilateral measures had inflicted on historically marginalized groups. That was why such measures had been condemned by a majority of States on a regular basis and in a number of different international forums.

27. The Independent Expert underlined how the contributory nature of unilateral coercive measures to ongoing human rights situations, including those related to the supply of weapons to armed groups, the blockade of Gaza and the targeted killings of non-State actors, touched the fundamental United Nations pillar of international peace and security.

International stakeholders, academics and civil society had pointed out that the imposition of unilateral coercive measures ran counter to foundational General Assembly resolutions, in particular Assembly resolution 2625 (XXV) regarding friendly relations between States. The unifying goal of friendly relations and the obligation to avoid interference in the internal affairs of other Member States were crucial preconditions for the peaceful co-existence of States.

28. The Independent Expert stressed that the international law applicable to coercive measures was remarkably clear. The Charter of the United Nations clarified that the Security Council was the only body with the authority to impose sanctions, and even then, only provided it had made a finding, under Article 39 of the Charter, that international peace and security had been jeopardized. Furthermore, he endorsed the report of the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/2000/33) that coercive measures must be limited in time, should not affect the innocent population, should not aggravate imbalances in income distribution, nor generate illegal or unethical business practices. Rather, sanctions regimes should be proved to be proportionate. They must be periodically monitored, and terminated when it becomes apparent that they are ineffective or result in grave human rights violations.

29. The Independent Expert argued that multilateral sanctions had been implemented successfully in the fight against colonialism, racism and apartheid in southern Africa. Similarly, a multilaterally agreed weapons embargo could be both legal and effective when appropriately aimed at promoting peace and diplomatic solutions to violence. He recommended that the harm to human rights caused by unilateral regimes should be further exposed through the communications dialogue of the special procedures, raised in the individual and inter-State complaints mechanisms of the treaty bodies, and debated in the context of the universal periodic review.

30. To conclude, the Independent Expert underscored how the accountability framework for the harm caused by unilateral coercive measures was underdeveloped. Where sanctions had resulted in famine, conflict or mass migration, the obligation to account for and repair the violation naturally followed. However, the political will to create and enforce this necessary framework remained absent. He called upon the States Members of the Human Rights Council to cooperate towards the development of mechanisms that would guarantee recourse and reparations for communities suffering as a result of coercive actions taken by individual States, and also defended multilateralism as the way forward.

B. Interactive discussion

31. During the plenary discussion, representatives of the following States took the floor: Algeria, Bolivia (Plurinational State of), China, Cuba (on behalf of a like-minded group of developing countries), Ecuador, Egypt (on behalf of the Group of Arab States and in their national capacity), Fiji, Iran (Islamic Republic of), Iraq, Nicaragua, Pakistan (statement on behalf of the Organization of Islamic Cooperation and in their national capacity), Qatar, the Russian Federation, the Sudan, Tunisia (on behalf of the Group of African States), the United Arab Emirates (speaking on behalf of Bahrain, Egypt and Saudi Arabia), Venezuela (Bolivarian Republic of) (statement on behalf of the Movement of Non-Aligned Countries and in their national capacity) and Zimbabwe.

32. Representatives of the following national human rights institutions and non-governmental organizations spoke: the International Council Supporting Fair Trial and Human Rights, the Iraqi Development Organization, the Maarij Foundation for Peace and Development, the National Human Rights Committee of Qatar, United Nations Watch and Verein Südwind Entwicklungspolitik.

33. Most participants characterized the imposition of unilateral coercive measures as a violation of human rights, especially when taken against developing and least developed countries. Delegates also referenced unilateral coercive measures as having an adverse effect on the right to development and economic, social and cultural rights, including the right to education, the right to an adequate standard of living, the right to health, the right to food and the right to water. Some participants referred to instances where unilateral

coercive measures had had an impact on civil and political rights, in particular, the right to freedom of movement, the right to privacy, the right to fair trial and the right to life.

34. Some speakers described unilateral coercive measures as a violation of the Charter and the principles enshrined in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. They also regarded these measures as obstacles to the achievement of the Sustainable Development Goals included in the 2030 Agenda for Sustainable Development. Some delegations also cited General Assembly resolution 71/193 as an instrument condemning the adoption of such measures.

35. Some delegates drew a distinction between unilateral coercive measures and sanctions applied pursuant to decisions by the Security Council. While the latter were considered effective tools that the international community used to resolve conflicts, unilateral coercive measures were perceived by the same delegations as a means of collective punishment.

36. Many participants emphasized that unilateral coercive measures had disproportionate and discriminatory effects on vulnerable groups, which deserved more attention of States and of the Human Rights Council. Some groups especially affected by unilateral coercive measures cited were women, children, older persons, persons with disabilities, indigenous peoples, ethnic and religious minorities, peasants and the poor.

37. According to one delegate, even if these groups were not the primary targets of the measures, experience showed that they were the first to suffer from their consequences. Speakers also considered the measures inefficient and counter-productive, as they often entrenched the leaders they were intended to affect.

38. Some participants recalled that unilateral coercive measures violated human rights beyond the populations of targeted States. Some measures could even affect the human rights of nationals of the targeting State.

39. According to a number of participants, unilateral coercive measures were tools in the hands of the powerful by which more developed countries could apply pressure to developing and least developed countries with economic and political regimes that did not enjoy their approval. This violated general international law, as it constituted interference in the self-determination of peoples and their right to decide on their own economic and political systems. Such coercive measures were not only unilateral but also unidirectional, as powerful States directed them against weaker ones. One delegation described them as "non-military measures to put pressure on countries", and drew a parallel between the laws governing armed conflicts to protect civilians and the need to protect the human rights, including the right to development, of the persons and peoples affected by unilateral coercive measures.

40. Cases of unilateral coercive measures cited during the interactive discussion included the recent measures taken against Qatar and the Bolivarian Republic of Venezuela, and the measures applied against Zimbabwe, Yemen, the State of Palestine (Gaza), the Islamic Republic of Iran and Iraq during the 1990s. Non-governmental organizations also referred to measures against specific groups, such as the Saharawi population by Morocco and the Rohingya by Myanmar.

41. One civil society organization noted that the panellists had spoken with largely the same perspective, despite different views on the legality and justifiability of unilateral coercive measures. One delegate regretted the absence of more voices that considered the measures potentially legal, since their presence would have enriched the debate. Another speaker, while recognizing the adverse effects to human rights caused by unilateral coercive measures, pointed out that corrupt practices of targeted States were primarily responsible for the lack of resources for the realization of human rights. A group of States proposed that a distinction be made between boycotts and blockades and unilateral coercive measures, given that the former measures were justified in cases where targeted States were believed to support terrorism.

42. A significant majority of participants urged States to refrain from adopting unilateral coercive measures in any case. Many also called for those in a position to do so to take

measures to prevent third States from adopting unilateral coercive measures in violation of international human rights law. Such measures were not conducive to the effective implementation of the Vienna Declaration and Programme of Action and the Sustainable Development Goals.

43. Some participants presented concrete proposals with regard to resources and the compensation necessary to promote accountability and reparations. All mechanisms of the Human Rights Council, including treaty-based mechanisms, Charter-based mechanisms and the universal periodic review mechanism, should be used to address and redress violations of human rights caused by unilateral coercive measures.

44. Many called for the creation of a dedicated mechanism of the United Nations human rights system to ensure accountability and reparations. The aim of the mechanism would be to prevent the application of new unilateral coercive measures, to mitigate the effects of those in place, and to provide full reparation through restitution, compensation and satisfaction. It could be an ad hoc or permanent body, adopted by the Human Rights Council through a regular resolution, a declaration or a separate treaty. Delegates also suggested the creation of a central registry to document violations of human rights as a consequence of unilateral coercive measure. The said mechanism and the central registry would be instrumental in the promotion of principles and guidelines to prevent further adverse effects on human rights caused by unilateral coercive measures. They would also contribute to democratic control of the exercise of political or economic power that affected people's lives, assessing whether it was compatible with the purposes of the Charter.

45. The participants in the discussion explored what a possible mechanism or body for efficient and effective redress for victims affected by unilateral coercive measures and to promote accountability would look like. Some wondered which specific steps would be necessary to create such a mechanism to avoid vetoes by powerful States that impose such measures. Other questions were concerned with the absence, insufficiency or ineffective nature of existing mechanisms, the negative impact of unilateral coercive measures on an international democratic order and on the sovereignty of States, and the prospects of reparations for those whose human rights had been affected by such measures.

C. Responses from panellists

46. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights emphasized the diplomatic ambiguity of the treatment of unilateral coercive measures in official documents, entailing different interpretations from developing and developed countries. Some States had the view that unilateral coercive measures violated international law, while others argued that no such presumption existed. He noted that all States, whether developed or developing, should express their views to permit the gradual achievement of a common understanding. He referred to extraterritoriality as an issue on which there was a fair amount of consensus, based on official European Union policy. International human rights law should be able to protect people in peace time at least as much as international humanitarian law protected people in war time. He also recalled that recently, by proclaiming the Sustainable Development Goals, all States had renewed their commitment to the rule of law, nationally and internationally. Since existing mechanisms were not effective enough to address the negative impact of unilateral coercive measures on human rights, the best option was to prevent the adoption of such measures.

47. Alena Douhan regretted the fact that debates on the issue of unilateral coercive measures focused too much on policy rather than on the rule of law. The rule of law had to be protected at the international level. To do so, the legal definition of unilateral coercive measures could clarify much of the political controversies surrounding them. Targeted sanctions were a violation in themselves, given that they did not provide procedural guarantees. On the other hand, not all attempts to influence other States were illegal; for example, counter measures could be adopted under the framework of existing international law. There were mechanisms to address reparations; they did not, however, function as they should, and effective mechanisms will not be possible until there was real dialogue on the matter between all parties concerned.

48. Jean Ziegler noted that Qatar was the object of unilateral sanctions applied by other States, and this had dramatic consequences for its population, given that many basic items had to be imported into the country. The sanctions imposed on Qatar were therefore illegal and should be lifted. In this case, the International Court of Justice would be competent to decide on compensation to the population of Qatar. The refusal to trade with another State was not in itself a violation of international law; but when it impeded the realization of the right to development, it was an unlawful measure. Mr. Ziegler recalled that the Human Rights Council first called for an end to unilateral coercive measures in 2012, when it adopted resolution 19/32. Little had since changed in places like Gaza and Cuba, which had suffered from the consequences of unilateral coercive measures for years. He hoped that this would not be the case with the Bolivarian Republic of Venezuela. Mr. Ziegler cited former Secretary-General Kofi Annan, who had once stated that, with regard to human rights, human conscience evolved, "but at the pace of a glacier". He concluded by calling upon all stakeholders to strive for a new norm banning unilateral coercive measures that violated human rights or impose obstacles to the collective right to development.

49. The Independent Expert on the promotion of a democratic and equitable international order stated that the international order was undermined when States unilaterally imposed sanctions or blockades on other States without the approval of the Security Council. Remedies should be granted first by the cessation of the measures, and second by reparation to victims in both targeted States and third countries. The sanctions against Qatar were totally incompatible with General Assembly resolution 2625 (XXV), and the State could bring an inter-State procedure before the Human Rights Committee. He also proposed that the General Assembly request an advisory opinion on unilateral coercive measures from the International Court of Justice. The Independent Expert emphasized that the general principles of law were violated by blockades and other coercive measures. The general principles were the spirit of the law, and what inspired the law; these included good faith, estoppel and non-arbitrariness. Unilateral embargoes also constituted a violation of *pacta sunt servanda*, and could be seen as a new form of colonialism. It was a usurpation of sovereign competencies. The Independent Expert referred to the lack of good faith of many businesses, which took advantage of investment dispute settlement procedures to the detriment of the basic human rights of populations affected, undermining the capacity of States to ensure these rights, but acted differently when their trade was affected by unilateral coercive measures. In cases of the latter, they rarely brought similar disputes before the International Centre for Settlement of Investment Disputes against targeting States.

IV. Conclusions

50. **The moderator presented the following conclusions and recommendations drawn from the panel discussion:**

(a) **Unilateral coercive measures should be prevented; violations of human rights caused by such measures could entail the international responsibility of States, and consequently, the duty to offer reparations to victims;**

(b) **A clearer definition of unilateral coercive measures should guide efforts to identify them, including in relation to possible resources and means of access to compensation;**

(c) **The Human Rights Council and Member States should focus on existing mechanisms when examining reparations for unilateral coercive measures;**

(d) **All States are encouraged to create domestic reparation mechanisms;**

(e) **The Human Rights Council should consider the establishment of a commission of indemnification and reparation for persons who feel that their human rights have been negatively affected by the adoption of unilateral coercive measures;**

(f) **The Human Rights Council should also consider creating a repository of cases of violations of human rights that result from unilateral coercive measures.**